REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 13 of 2007**

% **Date of Decision** : 9th February, 2007.

RAJESH KUMAR GOUHARI .... Appellant.
Through Mr. C.N. Sreekumar & Ms. Nidhi Ravindran, Advocates.

VERSUS

UOI & ANR .... Respondents.
Through Mr. Kirtiman Singh, Advocate for respondent No. 2..

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR.JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ? Yes.

3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J:

1. The present Appeal has been filed by Mr. Rajesh Kumar Gouhari (hereinafter referred to as the appellant, for short) challenging the judgment dated 15th December, 2006 dismissing the civil writ petition filed by him. The appellant, in the writ petition, had challenged and questioned order dated 18th February, 2005

transferring him to Bangalore for closure of the branch office and recovery of dues.

2. The appellant is an employee of Educational Consultants India Limited, a Government of India Enterprise, the respondent in the present appeal. The appellant was employed as Assistant Manager (Internal Audit) with the respondent on 30th December, 1996. In May, 1999, the said post was designated as Assistant Manager (Finance). Thereafter, he was transferred to personnel and then to administrative department for performing administrative duties.

3. Learned counsel for the appellant submitted that the order of transfer was liable to be struck down on the ground that it was vitiated by mala fides and was passed with the intention to harass the appellant. It was submitted that Mr. A.K. Motwani, Director (Technical)/Chief Vigilance Officer was behind the said transfer. Mr. A.K. Motwani it was stated had a personal grudge against the appellant, as he had submitted a report regarding misuse of official vehicle and refund of excess airfare paid beyond entitlement. Reference was also made to information furnished under the Right to Information Act by the respondent and Karnataka Residential Educational Institutions Society to argue that there was no work in Bangalore.

4. Learned counsel for the respondent, on the other hand, controverted the submissions made and relied upon the impugned order.

5. It is admitted by the appellant that as per terms of employment, he could be transferred to anyplace in India and abroad. As per the appointment letter, the appellant is liable to serve in any part of India and abroad at the discretion of the management. Transfer, it is well settled is an incidence of service and courts do not interfere and quash transfer orders unless (i) it is mala fide, (ii) prohibited under service rule, or (iii) passed by an incompetent person. In the present case, the appellant has taken plea of mala fides and the said plea has to be examined.

6. In Kendriya Vidyalaya Sangathan versus Damodar Prasad Pandey reported in (2004) 12 SCC 299, it was observed;

> "4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa 1995 Supp 4 SCC 169. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India v. S.L. Abbas (1993) 4 SCC 357). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any

> operative guidelines or rules the courts should not ordinarily interfere with it. In Union of India v. Janardhan Debanath (2004) 4 SCC 245 it was observed as follows: (SCC p. 250, para 9)
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> No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan (2001) 8 SCC 574.
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> In the present case, the Tribunal categorically came to hold that mala fides were not involved and the High Court did not disturb that finding."

7. Similarly in, State of U.P. Versus Siya Ram reported in (2004) 7 SCC 405, it was observed;

> 5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the

> case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan (2001) 8 SCC 574.
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> 6. The above position was recently highlighted in Union of India v. Janardhan Debanath (2001) 4 SCC 245. It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest."

8. In the writ petition, main plea taken by the appellant was that he had come across certain irregularities in awarding contract to M/s Satyam Renaissance Consulting, misuse of transport etc. and,

therefore, he had been victimised. Learned counsel for the appellant relied upon ground 'M' of the writ petition, which reads as under:-

> "Because the action of the respondents in transferring the petitioner out of his cadre is wholly motivated by mala fides and a result of the disclosure of the irregularities of the higher officials by the petitioner which has resulted in curtailment of official transport, non-payment of alleged travel reimbursement, dismissal of two General Managers and a Dy. Manager and initiation of a CBI enquiry."

9. A reading of the said ground shows that the allegations made are entirely vague, cryptic and without any details. The allegations made also show that two General Managers and a Deputy Manager had been dismissed and the matter has been referred to the Central Bureau of Investigation.

10. On the other hand, the stand of the respondents all along has been that there is no material to suggest that the appellant had exposed any financial irregularities and it was the competent authority that had initiated appropriate action against the erring officials who have since been dismissed from service. In the counter affidavit, it was pointed out that while reviewing IT implementation plan, some irregularities had come to notice and an enquiry was ordered. Disciplinary proceedings were initiated and three officers were dismissed. The said enquiry related to award of contract to M/s

Satyam Renaissance Consulting. Later on the matter was referred to Central Bureau of Investigation for further investigation. It appears subsequently that the orders of dismissal against the officers were converted into suspension. The name of these three officers are Mr. I.P. Kwatra, General Manager (Finance), Mr. U.K. Habbu, General Manager (Portal) and Ms. Monalisa Sen, Deputy Manager (Projects).

11. The irregularities were noticed in 2001 long before the order of transfer under challenge dated 18th February, 2005 was made. There is nothing to substantiate or even indicate that any of the three persons had any role to play in the order of transfer and/or the appellant herein was responsible for the dismissal/suspension of the said officers. In the counter affidavit, all the allegations have been categorically denied. It appears rather strange that a person who was already dismissed/suspended and also facing possibility of prosecution and investigation by the Central Bureau of Investigation, would yield influence to have the appellant transferred to Bangalore. Transfer would not have served any purpose and helped the three officers.

12. During the course of arguments, learned counsel for the appellant submitted that he had filed applications under Order VI

Rule 17 and Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short) before the learned single Judge. No reply/counter affidavit to the applications was filed. We may in this regard notice that the learned single Judge has specifically recorded that she is dealing with the appellant's case as it stands including the pleas raised in the application under Order VI Rule 17 of the Code. The learned single Judge has discussed all the allegations against Mr. A.K. Motwani, Mr. Amit Dutta and others and dismissed them finding them to be without substance. While discussing the allegations against Mr. A.K. Motwani, it was pointed out that his name was not specifically mentioned in the original petition. Learned single Judge has recorded that during the course of arguments on 27 November, 2006, it was stated at bar on behalf of the appellant that on 23rd July, 2003, the appellant had made a complaint against Mr. A.K. Motwani for using the official vehicle and at the same time he was availing conveyance allowance. Similarly, it was alleged at the bar that the appellant had made a report on 24th November, 2003 to the CMD in respect of intended travel of Mr. A.K. Motwani in December, 2003. Learned single Judge has also recorded that these allegations had not been mentioned in the paragraphs sought to be incorporated in the writ petition by the

amendment application. In these circumstances, learned single Judge has held that these allegations cannot be believed. Learned single Judge had also pointed out that the proposal to transfer the appellant was finally approved by Mr. S.K. Lokhande, Manager (ID). No allegations against him had been made by the appellant and it was also not alleged that Mr. S.K. Lokhande was influenced by any of the persons who allegedly had grievance against him. Even in the application under Order VI Rule 17 and Order I Rule 10 of the Code, no prayer and/or allegation had been made against Mr. S.K. Lokhande.

13. Additional affidavit filed by the respondent before the learned single judge shows that vide note dated 8.9.2001 Mr. U.K. Habbu was directed to be immediately disassociated with the IT project and was placed under suspension pending enquiry. A fact finding report was prepared by Mr. A.K. Motwani, Director (Tech.) and Mr. I.P. Kwatra, General Manager (Fin.).On 9.1.2002 the appellant was appointed as the presenting officer in the enquiry to be held against Mr. U.K. Habbu. Thereafter Board of Directors of the respondent directed suitable action against all officials who had projected a misleading picture and were responsible for misappropriation of public funds. Matter was also referred to CBI. As per directions of the

Board of Directors, the appellant submitted a preliminary report dated 11.4.2002. It cannot be said that the appellant was responsible for the CBI case or uncovering the case. It is also apparent that no endeavor has been made to protect and save any officer. The appellant was appointed as a presenting officer by the respondent. Mr. A.K. Motwani's name is not mentioned in the preliminary report of the appellant. Mr. Amit Dutta, DM(P&A) was one of the members of the committee that had examined the proposals but as per report of the appellant, Mr. Amit Dutta was not involved in the award of and finalisation of the contract, which was done by committee of five other officers.

14. In our opinion, there is nothing to show and substantiate the allegations of mala fide made by the appellant. It is easy to make allegations of mala fide, malice, etc. but difficult to substantiate and justify the same. However, this does not mean that once allegations of mala fides are made, these should be believed. Courts have to scrutinise the allegations and draw reasonable inference on the basis of antecedent facts and circumstances as mentioned in the pleadings and on the basis of documents. There is no presumption that allegations of mala fides once made should be accepted. Necessarily, the onus to prove allegations of mala fide is on the

person who makes them. Presumption is in favour of bonafides of the impugned order. Foundation of facts to establish malafides should be pleaded. Inference of malafides cannot be made by merely making vague allegations and insinuations. Acceptable material should be produced by the person making the allegation. It is not understood and the appellant has not been able to explain the reason and cause, why in the writ petition as originally filed by him, allegations of mala fide, name of the officers and facts and circumstances were not highlighted and stated in detail. In these circumstances it was not necessary to have individual affidavit of Mr. A.K. Motwani and Mr. Amit Dutta. We may also point out that Mr. Amit Dutta had filed affidavits on behalf of the respondent. Order of transfer by the respondent cannot be connected to any act of the appellant. The appellant was appointed as a presenting officer in the departmental proceedings by the respondent.

15. It may be relevant to state here that when the Writ Petition (Civil) No. 8516/2005 had come up for hearing before the learned single Judge for the first time, vide order dated 18th May, 2005, the transfer orders were directed to be kept in abeyance. It is the case of the appellant that this order continued to be in operation. It is well known that parties after obtaining stay orders prolong litigation.

Some parties deliberately file applications for amendment, impleadment of parties to avoid hearing and expeditious disposal of the matter. We may also state here that against the stay order dated 18th May, 2005 and subsequent orders extending the stay, the respondent employer had filed an appeal before a Division Bench. The operation of the stay orders was stayed by the Division Bench, while issuing notice in the said appeal being LPA No. 1175/2005. After this order, the appellant herein wrote number of letters to the respondent praying for leave and it's extension as he had to look after his ailing father and children. He even approached ministers and politicians for help.

16. Learned Single judge in the impugned judgment has pointed out that on 9th November, 2006 it was put to the respondent whether he would go to Bangalore tentatively for a period of three months during which he could complete the assigned work. The counsel for the appellant took pass over before the learned Single Judge but thereafter rejected the suggestion on the ground that his father had some health problem and he was busy looking after his father.

17. The second ground to establish and prove mala fide is that there is no work in Bangalore office. Reliance in this regard is placed upon the information furnished by Karnataka Residential

Educational Institutions Society under the Right to Information Act. It is pointed out that the entire staff at Bangalore has been transferred out and, therefore, there was no cause or reason for the appellant to be transferred to Bangalore. It may be mentioned here that initially the plea taken by the appellant was that there was no work for him to do at Bangalore and he being a finance man was not required to do work relating to civil engineering. The stand of the respondent, however, has been that the Bangalore office is being closed but dues of the respondent have to be recovered. There are also disputes pending between the respondent and Karnataka Residential Educational Institutions Society which have been referred to arbitration. It is pointed out by the respondent that in the absence of the appellant, the work for recovery is being temporarily followed up from Noida. The explanation given by the respondent cannot be rejected. In fact, it is admitted by the appellant that arbitration between the respondent and Karnataka Residential Educational Institutions Society is going on and recoveries of the dues have to be made. For handling the arbitration proceedings some one at Bangalore is required. The appellant had earlier handled similar work at Allahabad. Moreover as held in Siya Ram's case (supra) the issue whether transfer of the appellant was in

interest of public service essentially requires factual adjudication and normally courts should not go into this aspect.

18. Keeping all these aspects in mind, we do not find any merit in the present Appeal and the same is accordingly dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

FEBRUARY 9, 2007
VKR/P